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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;
17 OTTOMOTTO LLC; OTTO TRUCKING
18 LLC,

19 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S MOTION
FOR RECONSIDERATION OF ORDER
ON COMPREHENSIVE
ADMINISTRATIVE MOTIONS TO FILE
UNDER SEAL (DKT. 2685)**

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on a date and time to be scheduled by the Court, before the Honorable William H. Alsup, U.S. District Court Judge, Plaintiff Waymo LLC (“Waymo”) will and hereby does move the Court for reconsideration of limited parts of the Order on Comprehensive Administrative Motions to File Under Seal (Dkt. 2685). Specifically, Waymo seeks an order:

1. Sealing portions of the deposition transcript of Gregory Kintz, dated April 26, 2017 (previously filed at Dkt. 409-8), specifically those portions marked with green highlights at 4:22–23; 5:6–7, 11–12, 14–15; 6:23; 7:18–19; and 8:15–16, 24 in the version filed concurrently herewith as Exhibit A.
2. Sealing portions of the Rule 30(b)(6) deposition transcript of Pierre Yves-Droz, dated August 3, 2017 (previously filed as Dkt. 1299-5), filed concurrently herewith as Exhibit B.
3. Sealing portions of Defendants’ Response to Waymo’s Précis regrading Defendants’ Litigation Misconduct (previously filed as Dkt. 2477-4), specifically the portions marked by the red box at 3:26–27, in the version filed concurrently herewith as Exhibit C.
4. Sealing portions of an email sent by Drew Bagnell, dated March 19, 2016 (previously filed as Dkt. 1159-14), specifically the portions marked with green highlight in the version filed concurrently herewith as Exhibit D.
5. Sealing portions of an email sent by Anthony Levandowski, dated April 30, 2016 (previously filed as Dkt. 1341-12), specifically those portions marked with green highlights in the version filed concurrently herewith as Exhibit E, in addition to passages previously granted sealing.
6. Sealing portions of an email sent by Anthony Levandowski, dated April 30, 2016 (previously filed as Dkt. 1526-23), specifically those portions marked with green highlights in the version filed concurrently herewith as Exhibit F, in addition to passages previously granted sealing.

- 1 7. Sealing portions of the Rebuttal Expert Report of Walter Bratic (previously filed as Dkt.
2 2275-4), specifically those portions marked with green highlight at ¶¶ 35, 48, 55, 108,
3 119, 211, 213, & 221 in the version filed concurrently herewith as Exhibit G, in addition
4 to passages previously granted sealing.
- 5 8. Sealing portions of Plaintiff's Response to Discovery Order" (previously filed as Dkt.
6 2467-2), specifically the portions marked with green highlights at 4:6-7 in the version
7 filed concurrently herewith as Exhibit H.
- 8 9. Sealing portions of an email from Brian Salesky, dated January 31, 2015 (previously
9 filed as Dkt. 1336-11/1396-10), specifically the portions marked with green highlights
10 in the version filed concurrently herewith as Exhibit I, in addition to passages
11 previously granted sealing.
- 12 10. Sealing portions of an email sent by Drew Bagnell, dated March 19, 2016 (previously
13 as Dkt. 2606-12), specifically the portions marked with green highlights in the version
14 filed concurrently herewith as Exhibit J.

15 This Motion is supported by this Notice of Motion, the attached Memorandum of Points and
16 Authorities, the accompanying attorney declaration, the pleadings and papers on file in this action, and
17 such arguments and authorities as may be presented to the Court.

Waymo respectfully requests reconsideration of limited parts of the order filed as Dkt. 2685 in the form of an order sealing Waymo’s highly sensitive and confidential business information. Waymo’s reconsideration requests are narrow, and encompass only the specific portions of documents that would explicitly disclose confidential business information, which would cause Waymo significant competitive harm.

I. LEGAL STANDARD

1. Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.* In the context of non-dispositive motions, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1135, 1138 (9th Cir. 2003)). In the context of dispositive motions, materials may be sealed only if the party seeking sealing demonstrates “compelling reasons” to keep the material sealed. *Kamakana*, 447 F.3d at 1178. Material should be sealed under the heightened “compelling reasons” standard to prevent “the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets,” *id.*, as well as to prevent court records from becoming “sources of business information that might harm a litigant’s competitive standing,” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

II. WAYMO’S TRADE SECRETS

Under both the “good cause” standard and the heightened “compelling reasons” standard, courts have determined that trade secret information merits sealing. *See, e.g., Music Grp. Macao Commercial Offshore Ltd. v. Foote*, No. 14-cv-03078, 2015 WL 3993147, at *1 (N.D. Cal. June 30, 2015) (quoting *Kamakana*, 447 F.3d at 1179); *Brocade Commc’ns Sys., Inc. v. A10 Networks, Inc.*, No. C 10-3428, 2013 WL 211115, at *1, *3 (N.D. Cal. Jan. 17, 2013); *see also* Fed. R. Civ. P. 26(c)(1)(G) (courts may issue orders “requiring that a trade secret . . . not be revealed”). Indeed, California’s Uniform Trade Secrets Act provides in relevant part that, “[i]n an action

1 under this title, a court shall preserve the secrecy of an alleged trade secret by reasonable means,
2 which may include . . . sealing the records of the action.” Cal. Civ. Code § 3426.5. Without
3 sealing, trade secrets would be destroyed through publication. Accordingly, courts regularly grant
4 sealing of asserted trade secrets, even over objections from defendants. *See, e.g., Fortinet, Inc. v.*
5 *Sophos, Inc.*, No. 13-cv-5831, 2015 U.S. Dist. LEXIS 151930, at *6-7 (N.D. Cal., Nov. 9, 2015)
6 (granting sealing motion, noting that “the Court is not in a position to make this judgment at this
7 time”).

8 Specifically portions of the deposition transcript of Gregory Kintz, dated April 26, 2017
9 (previously filed as Dkt. 409-8), marked with green highlights in the version filed concurrently
10 herewith as Exhibit A, contain descriptions of Waymo’s technology that, from context, would
11 disclose specifics of at least Alleged Trade Secret No. 1. In its order, the Court denied sealing of
12 Dkt. 409-8 because it had “not been narrowly tailored.” (Dkt. 2685 at 3). As such, Waymo
13 narrows its request for sealing and respectfully identifies only those portions marked with green
14 highlights at 4:22–23; 5:6–7, 11–12, 14–15; 6:23; 7:18–19; and 8:15–16, 24 as those that would
15 disclose its trade secrets should they be made public. (Francis Decl. ¶¶ 3, 7.) Additionally, the
16 requests to seal the portions identified at 4:22–23 and 6:23 correspond to portions of Dkt. 1399-7
17 [Kintz Dep., April 26, 2017] for which this Court granted sealing in the same order. (*See* Dkt.
18 2685 at 14.)

19 Similarly, portions of the transcript of the Rule 30(b)(6) deposition transcript of Pierre Yves-
20 Droz, dated August 3, 2017 (previously filed as Dkt. 1299-5)—filed concurrently herewith as
21 Exhibit B—contain descriptions of Waymo’s technology that, from context, would disclose
22 specifics of Alleged Trade Secret No. 9. (Francis Decl. ¶¶ 4, 7.) The Court denied Waymo’s initial
23 request to seal this testimony because it had “not been narrowly tailored.” (Dkt. 2685 at 11.)
24 Waymo respectfully renews its request. The specific portions of the deposition testimony that
25 Waymo seeks to seal corresponds to portions of other documents for which the Court granted
26 Waymo’s request to seal. (*See* Dkt. 2685 at 53) (granting request to seal portions of Droz
27 deposition, including portions corresponding to the same portions requested for 1299-5, because
28 “[c]ompelling reasons warrant sealing of the identified portions to prevent the disclosure of

1 alleged trade secrets.” (*See e.g.*, Dkt. 1341-6)). Waymo respectfully requests that the Court
2 likewise grant sealing of the same information in Dkt. 1299-5.

3 Waymo respectfully resubmits its request to seal the identified portions in the email sent by
4 Drew Bagnell, dated March 19, 2016 (previously filed as Dkt. 1159-14), specifically the portion
5 marked with green highlights in the sealed version filed concurrently herewith as Exhibit D. The
6 Court denied Waymo’s request to seal the identified portion for the stated reason that it “describes
7 technical information at [] a high level of generality.” (Dkt. 2685 at 53). Waymo hereby clarifies
8 the precise nature of the limited information Waymo requests remained sealed. Rather than being
9 generalized information that poses no risk of divulging its alleged trade secrets, Waymo contends
10 the sentence that Waymo seeks to seal is derived from and tracks one of the specific self-driving
11 car test scenarios that comprise Alleged Trade Secret No. 25. (Francis Decl. ¶¶ 5, 7.) As such,
12 disclosure of this particular test scenario would in fact publicly disclose a portion of Waymo’s
13 alleged trade secrets, destroying the secrecy of the trade secret and giving Waymo’s competitors
14 access to the research and development of Waymo’s autonomous vehicle system. Accordingly, if
15 such information were made public, Waymo’s competitive standing would be significantly
16 harmed. (Francis Decl. ¶ 7.) For this reason, Waymo requests that the Court grant sealing of this
17 specific information.

18 Likewise, Waymo’s other request to seal the same portion in the same email exchange
19 from Drew Bagnell, dated March 19, 2016 (previously filed as Dkt. 2606-12) was denied by the
20 Court. Because of other highlighting that was in the underlying document, the Court may have
21 interpreted Waymo’s Comprehensive Administrative Motion to Seal as seeking to seal the
22 sentence “I have some diagrams to share.” Waymo hereby clarifies what it intended to seal.
23 Waymo only seeks to keep sealed the same portion of the document, marked with green highlights
24 in the sealed version filed concurrently herewith as Exhibit J, that it was with respect to Dkt. 1159-
25 14—the sentence that describes one of the self-driving car test scenarios in Alleged Trade Secret
26 No. 25. As disclosure of this information would reveal Waymo’s trade secret information and
27 harm Waymo’s competitive standing, disclosure of this particular test scenario would publicly
28 reveal a portion of Waymo’s alleged trade secrets, destroying the secrecy of the trade secret and

1 giving Waymo's competitors access to the research and development of Waymo's autonomous
 2 vehicle system. (See Francis Decl. ¶¶ 5, 7.) Accordingly, if such information were made public,
 3 Waymo's competitive standing would be significantly harmed. (See Francis Decl. ¶ 7.) Waymo
 4 requests that the Court grant sealing of this specific information.

5 Additionally, certain portions of the Levandowski email, dated April 30, 2016, (previously
 6 filed as Dkt. 1341-12 & Dkt. 1526-23)¹ should remain sealed, specifically the portions marked in
 7 green highlights in the sealed versions filed concurrently herewith as Exhibits E and F. Though
 8 the Court granted in part and denied in part sealing of both Dkt. 1341-12 and Dkt. 1526-23, it
 9 noted that the "request has not been narrowly tailored as required by Civil Local Rule 79-5."
 10 (Dkt. 2685 at 54, 57.) Waymo hereby narrows its sealing request further and respectfully clarifies
 11 that the portions identified above disclose specific technical information about Waymo's Alleged
 12 Trade Secret No. 9 (FAC lens). (Francis Decl. ¶ 6.) As such, disclosure of this information would
 13 in effect disclose Waymo's confidential trade secret information to the public and to its
 14 competitors, destroying the secrecy of Waymo's FAC development and significantly harming
 15 Waymo's competitive standing. (See Francis Decl. ¶¶ 6, 7.) For this reason, Waymo requests the
 16 Court grant sealing of this limited information with respect to both Dkt. 1341-12 and Dkt. 1526-
 17 23.

18 **III. HIGHLY SENSITIVE AND CONFIDENTIAL BUSINESS INFORMATION** 19 **SHOULD REMAIN SEALED**

20 Confidential business information that may "harm a litigant's competitive standing" if
 21 released also merits sealing. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598-99 (1978).
 22 In particular, disclosure of detailed confidential financial information would result in competitive
 23 harm. *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1224-26 (Fed. Cir. 2013)
 24 (reversing district court's refusal to seal the parties' confidential financial information). Likewise,
 25 this Court has already recognized that information regarding confidential business transactions,

26
 27 ¹ The document was filed in identical form and Waymo's request to seal certain portions
 28 applies identically to each version filed with the Court.

1 whether actual or contemplated, merit sealing. (*See* Dkt. 2326 at 5 (granting sealing of portions of
 2 Dkt. 1214- 6/1294-4 “which refer to Waymo acquisitions”); *id.* at 6 (granting sealing of portions
 3 of Dkt. 1214-18/1294-16 and Dkt. 1214-24/1294-18 that refer to Waymo acquisitions).)

4 Accordingly, Waymo’s highly sensitive and confidential information regarding its business plans
 5 and financial valuations should remain sealed.

6 Waymo requests only narrowly tailored portions of the Bratic Rebuttal Expert Report
 7 (previously filed at Dkt. 2275-4) should remain sealed where they disclose Waymo’s confidential
 8 financial information and business plans. Specifically, those portions marked with green
 9 highlights at ¶¶ 35, 48, 55, 108,² 119, 211, 213, & 221 in the version filed concurrently herewith
 10 as Exhibit G should remain sealed. Though the Court granted in part and denied in part sealing of
 11 Dkt. 2275-4, noting that part of it “is properly sealable because that portion contains Waymo’s
 12 confidential projections and financial information” (Dkt. 2393 at 2), Waymo hereby narrows its
 13 sealing request further and respectfully clarifies that the portions identified above disclose highly
 14 sensitive and confidential information about its potential business models as well as its current and
 15 potential business and partnership plans. (Francis Decl. ¶ 8; *see also* Dkt. 1048-1 ¶ 3.) The public
 16 disclosure of such specific business strategy information, for example, a list of those priorities that
 17 Waymo considers most critical to success in the TaaS space, or an internal assessment of a
 18 confidential P&L statement, would enable competitors to unfairly tailor their own business
 19 strategy based on Waymo’s confidential business strategy and plans, which would cause Waymo
 20 significant competitive harm. (*See* Francis Decl. ¶ 8.) For this reason, the Court should grant
 21 sealing of the limited portions identified above.

22 Portions of an email from Brian Salesky, dated January 31, 2015 (previously filed as Dkt.
 23 1336-11/1396-10), and filed concurrently herewith as Exhibit I should also remain sealed as they
 24 disclose Waymo’s internal business development dealings. The portions Waymo seeks to keep
 25 sealed are narrowly tailored to only those portions that discuss confidential business deals with
 26 _____

27 ² The Court’s Order (Dkt. 2685 at 77) granted sealing of paragraph 180 (bullet point 3).
 28 Waymo requested sealing of bullet point 3 at paragraph 108, and proceeds accordingly.

1 third-parties, as well as internal discussions disclosing Google and Waymo’s short- and long-term
 2 business development plans. Despite the date of the email, the limited information Waymo seeks
 3 to seal has continued importance at the current time and going forward, and the public disclosure
 4 of this information would harm existing business relationships and give competitors valuable
 5 insight into Waymo’s current and future plans. (Francis Decl. ¶ 9). For this reason, the Court
 6 should grant sealing of the limited portions identified in the Salesky email.

7 **IV. CONFIDENTIAL AND PRIVILEGED ATTORNEY ADVICE SHOULD REMAIN**
 8 **SEALED**

9 Materials that “have traditionally been kept secret for important policy reasons,” including
 10 “[a]ttorney-client privileged materials,” merit sealing. *See Lambright v. Ryan*, 698 F.3d 808, 820
 11 (9th Cir. 2012). Courts have therefore found that confidential and privileged attorney advice
 12 merits sealing under the heightened “compelling reasons” standard. *See, e.g., Williams &*
 13 *Cochrane, LLP v. Quechan Tribe of the Fort Yuma Indian Reservation*, No. 3:17-cv-1436, 2017
 14 WL 7362744 (S.D. Cal. Nov. 7, 2017) (granting sealing of attorney-client communications and
 15 attorney work product); *Hanson v. Wells Fargo Home Mortgage, Inc.*, No. , 2013 WL 5674997, at
 16 *1 (W.D. Wash. Oct. 17, 2013) (same).

17 Portions of Defendants’ Response to Waymo’s Précis in support of its Request to File a
 18 Motion for Relief Based on Defendants’ Litigation Misconduct (previously filed as Dkt. 2477-4),
 19 specifically at 3:26–27 and marked by the red box in the version filed concurrently herewith as
 20 Exhibit C, should remain sealed as they disclose confidential attorney advice regarding ongoing
 21 legal matters at Google. (*See* Francis Decl. ¶ 10.) The limited portion Waymo seeks to seal is a
 22 direct quotation from an email from Google counsel to internal recipients containing legal advice
 23 regarding company policy on litigation and legal regulatory matters. (*See* Dkt. 2477-6.) In its
 24 Order, the Court granted Waymo’s request to seal this source documents, noting that “[g]ood
 25 cause warrants sealing of the entirety of the document to prevent the disclosure of confidential
 26 attorney advice on internal policy matters.” (Dkt. 2685 at 45). For the same reason, the Court
 27 should grant Waymo’s request to seal the portion of Dkt. 2477-4 that directly quotes the sealed
 28 source material.

1 The Court should also grant Waymo's request to seal portions of Plaintiff's Response to
 2 Discovery Order (previously filed as Dkt. 2467-2), filed concurrently herewith as Exhibit H. The
 3 Court denied Waymo's request to seal, writing that "[t]he information . . . is a general statement in
 4 the form of a response to a court ordered discovery disclosure." Dkt. 2685 at 82. However, the
 5 portions marked with green highlights at 4:6-7 (version at Dkt. 2467-2 and also in version filed
 6 concurrently herewith) describe and quote Google's litigation hold instituted in this matter. (*See*
 7 Francis Decl. ¶ 11.) Further, this confidential information was produced in this litigation pursuant
 8 to Magistrate Judge Corley's Court Order Pursuant to Rule 502, Fed. R. Evid., which stated that
 9 the disclosure of such information contained in the parties respective litigation holds would "not
 10 operate as a waiver of any applicable privileges or protections in this litigation or any other federal
 11 or state proceedings." (Dkt. 2363 at 2.) As such, the public disclosure of this information would
 12 be inconsistent with Judge Corley's FRE 502 Order. (Francis Decl. ¶ 11.) For these reasons, the
 13 Court should grant Waymo's request to seal the portion of Dkt. 2467-4 that describes its litigation
 14 hold policy.

15 **V. CONCLUSION**

16 For the foregoing reasons, the Court should reconsider sealing the limited portions of Dkt.
 17 2685 discussed above and grant sealing of Waymo's trade secret information, highly sensitive and
 18 confidential business information, and confidential and privileged legal advice.

19
 20 DATED: January 28, 2019

QUINN EMANUEL URQUHART & SULLIVAN,
 LLP

21
 22 By /s/ Jonathan S.M. Francis

Jonathan S.M. Francis
 Attorneys for WAYMO LLC

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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;
17 OTTOMOTTO LLC; OTTO TRUCKING
LLC,

18 Defendants.

CASE NO. 3:17-cv-00939-WHA

**DECLARATION OF JONATHAN
FRANCIS IN SUPPORT OF PLAINTIFF
WAYMO LLC'S MOTION FOR
RECONSIDERATION OF ORDER ON
COMPREHENSIVE MOTION TO FILE
UNDER SEAL (DKT. 2685)**

1 I, Jonathan Francis, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and am admitted to
3 practice before this Court. I am an associate at the law firm Quinn Emanuel Urquhart & Sullivan,
4 LLP, counsel for the Plaintiff Waymo LLC (“Waymo”). I have personal knowledge of the matters set
5 forth in this Declaration, and if called as a witness I would testify competently to those matters.

6 2. I make this declaration in support of Plaintiff Waymo LLC’s Motion for
7 Reconsideration of Order on Comprehensive Administrative Motions to File Under Seal (Dkt. 2685)
8 (“Motion for Reconsideration”). The Motion for Reconsideration seeks an order sealing limited
9 portions of exhibits for which the Court denied sealing.

10 3. The portions of the deposition transcript of Gregory Kintz, dated April 26, 2017
11 (previously filed as Dkt. 409-8), marked with green highlights in the version filed concurrently
12 herewith as Exhibit A, contain, reference, and/or describe Waymo’s asserted LiDAR trade secrets,
13 specifically at least Alleged Trade Secret 1, or information that, from context, tends to disclose at least
14 Alleged Trade Secret 1.

15 4. The portions of the transcript of the Rule 30(b)(6) deposition transcript of Pierre Yves-
16 Droz, dated August 3, 2017 (previously filed as Dkt. 1299-5) filed concurrently herewith as Exhibit B,
17 contain, reference, and/or describe Waymo’s asserted LiDAR trade secrets, specifically Alleged Trade
18 Secret 9, or information that, from context, tends to disclose Alleged Trade Secret 9.

19 5. The portions of an email sent by Drew Bagnell, dated March 19, 2016 (previously filed
20 as Dkt. 1159-14 & as Dkt. 2606-12), specifically the portions marked with green highlights in the
21 versions filed concurrently herewith as Exhibit D and Exhibit J, contain, reference, and/or describe
22 Waymo’s asserted LiDAR trade secrets. More specifically, the portions marked describes one of the
23 specific self-drive test scenarios that comprise Alleged Trade Secret 25, which Waymo alleged was
24 misappropriated by Uber in this litigation.

25 6. The portions of an email sent by Anthony Levandowski, dated April 30, 2016
26 (previously filed as Dkt. 1341-12 & as Dkt. 1526-23), specifically the portions marked with green
27 highlights in the versions filed concurrently herewith as Exhibit E and Exhibit F, contain, reference,
28 and/or describe Waymo’s asserted LiDAR trade secrets. More specifically, the portions marked

1 describe technical specifications of Waymo's FAC lens, which was Alleged Trade Secret No. 9 in this
2 litigation. This information describes Waymo's trade secret, and discloses confidential manufacturing
3 information, that from context would disclose Alleged Trade Secret 9.

4 7. I understand that the trade secrets referenced in ¶¶ 3–6 are maintained as secret by
5 Waymo (Dkt. 25-47) and that each individual trade secrets is valuable to Waymo's business (Dkt. 25-
6 31), as reflected by the value of the settlement in this case. The public disclosure of this information
7 would destroy Waymo's trade secrets and give Waymo's competitors the ability to short-circuit the
8 normal development process by availing themselves of the fruits of Waymo's research and
9 development efforts while avoiding the significant time and expense of undertaking their own research
10 and development. Accordingly, if such information were made public, Waymo's competitive standing
11 would be significantly harmed. Such information remained sealed during the pendency of this case,
12 including at trial, where it was only discussed (if at all) in sealed sessions. Sealing of this type of
13 trade secret information is thus justified under either the "good cause" or "compelling reasons"
14 standard, and this Court has previously granted sealing of this type of information.

15 8. The portions of the Bratic Rebuttal Expert Report (previously filed at Dkt. 2275-4)
16 contain, or describe Waymo's confidential financial information and business plans. Specifically,
17 those portions marked with green highlights at ¶¶ 35, 48, 55, 108, 119, 211, 213, & 221 in the version
18 filed concurrently herewith as Exhibit G, disclose confidential and internal financial and business
19 development information, including detailed information regarding the internal assessments for the
20 growth of Waymo's self-driving technology and market. I understand that public disclosure of such
21 detailed business strategy information would enable competitors to unfairly tailor their own business
22 strategy based on Waymo's confidential business strategy and plans, which would cause Waymo
23 significant competitive harm.

24 9. The portions of an email from Brian Salesky, dated January 31, 2015 (previously filed as
25 Dkt. 1336-11/1396-10) and filed concurrently herewith as Exhibit I, disclose Waymo's internal
26 business development dealings, as well as confidential discussions with third parties. I understand that
27 the disclosure of this information would cause significant harm to Waymo's ability to engage in these
28 types of business discussions in the future. In addition, I understand that the portions identified

1 disclose current business and financial considerations that Waymo continues to evaluate in the present
 2 and for the foreseeable future. The disclosure of this information, even that which was first written in
 3 2015, thus would still cause Waymo substantial competitive harm today, should it be made public.

4 10. The portions of Defendants' Response to Waymo's Précis regarding Defendants'
 5 Litigation Misconduct (previously filed as Dkt. 2477-4), specifically the portions marked by the red
 6 box at 3:26–27, in the version filed concurrently herewith as Exhibit C, describes or discloses
 7 confidential legal advice given by Google counsel to Google employees. This legal advice describes
 8 the company's internal policy positions and assessment of ongoing litigation and legal regulatory
 9 matters. I understand that Google has maintained this advice as privileged and that the Court has
 10 granted sealing of the same information previously in this case. *E.g.*, Dkt. 2685 at 45 (granting sealing
 11 of Dkt. 2477-6).

12 11. The portions of Plaintiff's Response to Discovery Order (previously filed as Dkt. 2467-
 13 2), specifically marked with green highlights at 4:6-7 in the version filed concurrently herewith as
 14 Exhibit H describe the particulars of Google and/or Waymo's litigation hold policy in this and other
 15 matters. I understand that this policy constitutes confidential and privileged legal advice and is
 16 maintained as privileged in this litigation and others. I also understand that Waymo only disclosed this
 17 information to the Court and in this litigation in response to an order issued pursuant to Fed. Rule.
 18 Evid. 502, stating that such disclosure would not operate as a waiver of any asserted privileges.

19 12. Waymo's current requests to seal are narrowly tailored only to seal that information
 20 which merits sealing with respect to Exhibits A-J.

21
 22 I declare under penalty of perjury under the laws of the State of California and the United
 23 States of America that the foregoing is true and correct, and that this declaration was executed in San
 24 Francisco, California, on January 28, 2019.

25 By /s/ Jonathan S.M. Francis

26 Jonathan S.M. Francis
 27 Attorneys for WAYMO LLC
 28

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

CASE NO. 3:17-cv-00939-WHA

**[PROPOSED] ORDER GRANTING
PLAINTIFF WAYMO LLC'S MOTION
FOR RECONSIDERATION OF ORDER
ON COMPREHENSIVE
ADMINISTRATIVE MOTIONS TO FILE
UNDER SEAL (DKT. 2685)**

1 Plaintiff Waymo LLC (“Waymo”) has filed a Motion for Reconsideration of Order on
2 Comprehensive Administrative Motions for File Under Seal (Dkt. 2685) (“Motion for
3 Reconsideration”).

4 Having considered the Motion for Reconsideration, and good cause to seal having
5 been shown, the Court **GRANTS** Waymo’s Motion for Reconsideration and **ORDERS** sealed the
6 portions of the documents listed below:

- 7 1. Sealing portions of the deposition transcript of Gregory Kintz, dated April 26, 2017
8 (previously filed at Dkt. 409-8), specifically those portions marked with green highlights
9 at 4:22–23; 5:6–7, 11–12, 14–15; 6:23; 7:18–19; and 8:15–16, 24 in the version filed
10 concurrently herewith as Exhibit A.
- 11 2. Sealing portions of the Rule 30(b)(6) deposition transcript of Pierre Yves-Droz, dated
12 August 3, 2017 (previously filed as Dkt. 1299-5), filed concurrently herewith as
13 Exhibit B.
- 14 3. Sealing portions of Defendants’ Response to Waymo’s Précis regrading Defendants’
15 Litigation Misconduct (previously filed as Dkt. 2477-4), specifically the portions marked
16 by the red box at 3:26–27, in the version filed concurrently herewith as Exhibit C.
- 17 4. Sealing portions of an email sent by Drew Bagnell, dated March 19, 2016 (previously
18 filed as Dkt. 1159-14), specifically the portions marked with green highlight in the
19 version filed concurrently herewith as Exhibit D.
- 20 5. Sealing portions of an email sent by Anthony Levandowski, dated April 30, 2016
21 (previously filed as Dkt. 1341-12), specifically those portions marked with green
22 highlights in the version filed concurrently herewith as Exhibit E, in addition to passages
23 previously granted sealing.
- 24 6. Sealing portions of an email sent by Anthony Levandowski, dated April 30, 2016
25 (previously filed as Dkt. 1526-23), specifically those portions marked with green
26 highlights in the version filed concurrently herewith as Exhibit F, in addition to passages
27 previously granted sealing.
- 28 7. Sealing portions of the Rebuttal Expert Report of Walter Bratic (previously filed as Dkt.

2275-4), specifically those portions marked with green highlight at ¶¶ 35, 48, 55, 108, 119, 211, 213, & 221 in the version filed concurrently herewith as Exhibit G, in addition to passages previously granted sealing.

8. Sealing portions of Plaintiff's Response to Discovery Order" (previously filed as Dkt. 2467-2), specifically the portions marked with green highlights at 4:6-7 in the version filed concurrently herewith as Exhibit H.

9. Sealing portions of an email from Brian Salesky, dated January 31, 2015 (previously filed as Dkt. 1336-11/1396-10), specifically the portions marked with green highlights in the version filed concurrently herewith as Exhibit I, in addition to passages previously granted sealing.

10. Sealing portions of an email sent by Drew Bagnell, dated March 19, 2016 (previously as Dkt. 2606-12), specifically the portions marked with green highlights in the version filed concurrently herewith as Exhibit J.

IT IS SO ORDERED.

Dated: _____, 2019

WILLIAM H. ALSUP
United States Magistrate Judge